101-522

NEWBERRY NATIONAL VOLCANIC MONUMENT

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Public Law 101-522
101st Congress

An Act

Nov. 5, 1990
[H.R. 3840]

To establish the Newberry National Volcanic Monument in the State of Oregon, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT.

Historic preservation.
16 USC 431 note.

(a) IN GENERAL.—There is hereby established the Newberry National Volcanic Monument in the State of Oregon as a component of the National Forest System in order to preserve and protect for present and future generations its remarkable geologic landforms and for the purposes of providing for the conservation, protection, interpretation, and enhancement of its ecological, botanical, scientific, scenic, recreational, cultural, and fish and wildlife resources.

(b) AREA INCLUDED.—(1) The Monument shall comprise those lands generally depicted on the map entitled "Newberry National Volcanic Monument" and dated September 1990, which shall be on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture, Washington, District of Columbia.

(2) The Newberry Special Management Area, the Transferal Area, the Transferal Area Adjacent, and the Transferal Corridor shall comprise those lands generally depicted as such on the map referred to in paragraph (1).

(3) The Secretary may, by publication of a notice of availability of a revised map and after public comment, make corrections or minor changes to the boundary of the Monument or Special Management Area if such changes are—

(A) necessary to facilitate management of the Monument, Special Management Area and the immediately surrounding area,

(B) consistent with the purposes of this Act, and

(C) noncontroversial.

Any proposed boundary change shall be made pursuant to the National Environmental Policy Act of 1969.

SEC. 2. ADMINISTRATION.

(a) IN GENERAL.—Subject to valid existing rights, the Secretary shall administer the Monument and Special Management Area in accordance with the laws, rules, and regulations pertaining to the National Forest System and this Act as part of the Deschutes National Forest.

(b) TRANSFERAL AREA.—(1) Upon termination, cancellation, or relinquishment of all Federal geothermal leases (numbered OR-12008, OR-11612, and OR-11613), the lands and mineral rights encompassed by such leases, and other Federal land identified as the Transferal Area on the map referred to in section 1(b)(1), shall become part of the Monument and shall be administered under this Act.

(2) The Transferal Corridor is a part of the Transferal Area and shall be managed as such, except as otherwise provided in section 4.

(3) Prior to the termination, cancellation, or relinquishment of such geothermal leases, the Secretary of the Interior and the Secretary of Agriculture shall, to the extent practicable and consistent with the Geothermal Steam Act of 1970 and rights under such leases, manage the Transferal Area under the laws, rules, and regulations pertaining to the National Forest System in such a manner so as to preserve the natural values of the area which would qualify it for designation as a national monument.

(4) Upon discovery of commercial quantities of geothermal resources, paragraphs (1), (2), and (3) shall no longer apply.

(c) NEWBERRY SPECIAL MANAGEMENT AREA.—The area identified on the map referred to in section 1(b)(1) as the Newberry Special Management Area shall be managed as if it were part of the Monument, except as otherwise provided in section 4.

(d) TRANSFERAL AREA ADJACENT.—The area identified on the map referred to in section 1(b)(1) as the Transferal Area Adjacent is a part of the Special Management Area, except as otherwise provided in section 4.

(e) MANAGEMENT REQUIREMENTS.—The Monument and Special Management Area shall be administered in accordance with the following management requirements:

(1) Land management activities shall allow natural ecological succession of vegetation to continue to the maximum extent practical, as determined by the Secretary. Timber removal shall be permitted only to the extent the Secretary determines necessary to achieve the purposes of this Act and to protect health and safety. Timber within the Monument and Special Management Area shall not be considered part of the allowable sale quantity for the Deschutes National Forest.

(2) Recreation uses and interpretive facilities shall be provided, including (but not limited to) trails, campgrounds, resorts, and visitor centers, as identified in the management plan.

(3) Roads shall be permitted in the Monument and Special Management Area consistent with the purposes of this Act and in accordance with the management plan.

(f) SCIENTIFIC RESEARCH.—Scientific research shall be allowed consistent with the purposes for which the Monument was established.

(g) DISEASE, INSECT INFESTATION, AND FIRE HAZARD.—The Secretary is authorized to take action to the extent practicable to ensure that tree diseases, insect infestations, fire hazards, and fires within the Monument and Special Management Area do not seriously threaten resources outside the Monument and Special Management Area boundaries.

SEC. 3. EXCHANGES OF GEOTHERMAL LEASE RIGHTS.

(a) IN GENERAL.—Those holders of all Federal geothermal leases within the Monument as of the date of enactment of this Act and who are listed in subsection (c) of this section are authorized, without penalty, to relinquish all rights to such leases on the terms and conditions provided in this section and section 10 of the Geothermal Steam Act of 1970. Such leases are depicted on the map entitled "Geothermal Lease Compensation" which is a part of the Surface Resource Analysis of Newberry Volcano.

(b) GEOTHERMAL LEASE EXCHANGE.—Upon the acceptance by the Secretary of the Interior of a lease relinquished pursuant to subsection (a), the Secretary of the Interior shall immediately issue, in lieu thereof and in full compensation for such relinquishment, geothermal leases of like value as described in subsection (c). The leases issued in lieu of relinquished leases shall contain the terms and conditions prescribed in the Surface Resource Analysis of Newberry Volcano and the Land and Resource Management Plan for the Deschutes National Forest, dated August 1990. Consistent with such terms and conditions, such in-lieu leases shall be administered under the Geothermal Steam Act of 1970.

(c) DESCRIPTIONS.—(1) The parties (including their successors, or assignees), and lands referred to in subsection (a), are those specified on the map referred to in subsection (a).

(2) The leases to be issued pursuant to subsection (b) and the interests in lands subject to such leases are as follows:

(A) Within the Newberry Caldera Known Geothermal Resource Area, lease area 1, leases shall be issued with an undivided fractional interest distributed as follows:

(i) 62.37 percent to California Energy Co., Inc.

(ii) 35.09 percent to Christian F. Murer.

(iii) 2.54 percent to Delta Funds, Inc.

(B) Within the Newberry Caldera Known Geothermal Resource Area, lease area 2, leases shall be issued with an undivided fractional interest distributed as follows:

0.84 percent to L.H. Armour, Jr.

5.49 percent to Frances B. Bunn.

1.73 percent to Robert B. Bunn.

8.52 percent to Geo-Newberry Crater, Inc.

15.10 percent to Hawthorn Oil Co.

3.42 percent to Terry Allen Kramer.

64.90 percent to George W. Waters.

(C) Outside the Newberry Caldera Known Geothermal Resource Area, leases shall be issued for the approximate acreage noted:

(i) Lease Area 3—Robert B. Bunn—1,280.00 acres.

(ii) Lease Area 4—Frances B. Bunn—1,240.00 acres.

(iii) Lease Area 5—Geo-Newberry Crater, Inc.—2,928 acres.

(d) AVAILABILITY OF CERTAIN LANDS FOR GEOTHERMAL LEASING UNDER THE GEOTHERMAL STEAM ACT.—Following the expiration, relinquishment, or termination of any geothermal lease issued for lands identified in subsection (c), except for lands situated within the Special Management Area, such lands may be offered for lease under the Geothermal Steam Act of 1970.

(e) AVAILABILITY OF CERTAIN LANDS FOR GEOTHERMAL LEASING UNDER THIS ACT.—Following expiration, relinquishment, or termination of a geothermal lease on lands identified in subsection (c), within the Special Management Area, lands shall be offered for lease as provided in section 4(a)(5) of this Act.

(f) NONAPPLICABLE PROVISIONS.—The provisions of subsection (g) of section 6 of the Geothermal Steam Act of 1970 (30 U.S.C. 1005 (c) and (g)) shall not apply to any geothermal lease within the Monument existing on the date of enactment of this Act.

SEC. 4. SUBSURFACE RIGHTS.

(a) WITHDRAWAL.—

(1) MONUMENT.—Subject to valid existing rights, Federal lands within the Monument are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, or patent under the mining laws, and from disposition under all mineral and geothermal leasing laws.

(2) TRANSFERAL AREA.—Subject to valid existing rights, Federal lands within the Transferal Area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, or patent under the mining laws, and from disposition under all mineral and geothermal leasing laws. Upon completion of a well capable of producing geothermal steam in commercial quantities, as defined in section 6(d) of the Geothermal Steam Act of 1970 (30 U.S.C. 1005(d)) on valid existing leases within the Transferal Area, as determined by the Secretary of the Interior, the withdrawal made by this subsection shall be revoked, and such lands shall be restored to the operation of the public land laws, mining laws, and mineral and geothermal leasing laws.

(3) TRANSFERAL CORRIDOR.—Subject to valid existing rights, Federal lands within the Transferal Corridor are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry or patent under the mining laws, and from disposition under all mineral and geothermal leasing laws.

(4) TRANSFERAL AREA ADJACENT.—Subject to valid existing rights, Federal lands within the Transferal Area Adjacent are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, or patent under the mining laws, and from disposition under all mineral leasing laws except the Geothermal Steam Act of 1970. Upon completion of a well capable of producing geothermal steam in commercial quantities, as defined in section 6(d) of the Geothermal Steam Act of 1970 (30 U.S.C. 1005(d)) within the Transferal Area, as determined by the Secretary of the Interior, this area will be managed as part of the Special Management Area and be governed by provisions in section 4(a)(5). Geothermal leases issued in this area shall contain stipulations that prohibit surface occupancy and no plans of operation will be approved by the Secretary until commercial quantities of geothermal resources are found within the Transferal Area.

(5) SPECIAL MANAGEMENT AREA.—Subject to valid existing rights, Federal lands within the Special Management Area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, or patent under the mining laws, and under all mineral leasing laws except the Geothermal Steam Act of 1970. Geothermal leases issued in this area shall contain stipulations that prohibit surface occupancy and shall require that the Special Management Area be entered only by directional drilling from outside the Special Management Area boundaries. In the event that no commercial quantities of geothermal resources are developed under leases within 30 years after the date of enactment of this Act, the Secretary of the Interior is authorized and directed to withdraw such areas in perpetuity from all further leasing under the Geothermal Steam Act of 1970. Upon such withdrawal, the Special Management Area designations shall terminate and such areas shall become part of the Monument. All or

portions of the Special Management Area may be withdrawn from the Geothermal Steam Act of 1970 and made a part of the Monument earlier at the joint discretion of the Secretaries of Interior and Agriculture. This provision shall in no way restrict the Secretary's authority to acquire by purchase, donation or exchange any lease within the Special Management Area prior to the expiration of the term of years set forth in this paragraph.

(b) GEOTHERMAL LEASE SALES.—(1) Within one year after the date of the enactment of this Act, pursuant to the Geothermal Steam Act of 1970, the Secretary of the Interior shall offer for lease by competitive bid the lands depicted on the map entitled "Geothermal Lease Sale Parcels," which is part of the Surface Resource Analysis of Newberry Volcano, with stipulations as provided therein.

(2) Any of the lands described in paragraph (1) of this subsection which are not leased as a result of the first competitive bid offering, or any of the initial leases which are relinquished, terminated, or otherwise canceled, may be reoffered by the Secretary of the Interior for lease by competitive bid under the Geothermal Steam Act of 1970, except that all lands within the Special Management Area shall be subject to the leasing provisions of subsection (a)(5) of this Act.

(c) AUTHORITY FOR PLANS OF OPERATION.—The Secretary of Agriculture shall regulate all surface disturbing activities conducted pursuant to any lease issued under this section and section 3 and shall determine reclamation and all other actions as required in the interest of conservation of these resources. No permit to drill on a geothermal lease for areas covered under this Act may be granted without the analysis and approval by the Secretary of Agriculture of a plan of operations covering proposed surface disturbing activities within the lease area. In making such determination, the Secretary shall consider the effects of the proposed operations on the values for which the Monument and Special Management Area were established.

SEC. 5. FISH AND WILDLIFE.

Nothing in this Act shall be construed to affect the jurisdiction or responsibilities of the State of Oregon with respect to fish and wildlife, including the regulation of hunting, fishing, and trapping, except that the Secretary may designate zones where, and establish periods when, no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary pursuant to this section shall be put into effect only after consultation with the Department of Fish and Wildlife of the State of Oregon or its successor agency.

SEC. 6. MANAGEMENT PLAN.

(a) IN GENERAL.—(1) Within three fiscal years beginning after the date of enactment of this Act, the Secretary shall develop a management plan which shall address the lands established in section 1. The management plan shall be developed in consultation with the Council (established by section 7), interested Federal, State, and local government agencies, and the public.

(2) The management plan shall be periodically updated, amended, or revised as necessary and, at the discretion of the Secretary, such updates, amendments, or revisions may be done separately or in

conjunction with land management planning for other adjacent areas of the Deschutes National Forest.

(3) No actions taken under the authority of this Act shall require the reconsideration, amendment, or revision of the Deschutes National Forest Land and Resource Management Plan prepared pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604). The management plan required by paragraph (1) shall be incorporated into the Deschutes National Forest Land and Resource Management Plan upon the regular revision of the the Deschutes National Forest Land and Resource Management Plan.

(b) ISSUES TO BE ADDRESSED BY MANAGEMENT PLAN.—Consistent with the purposes for which the Monument and Special Management Area were established, the Management Plan shall address at least the following management issues:

(1) Recreation, including consideration of a full range of existing and appropriate new facilities and programs for recreation during all seasons of the year.

(2) Vegetation, including consideration of a full range of management options, and a program to reestablish old growth ponderosa pine ecosystems.

(3) Roads and facilities, including—

(A) consideration of the general location, design, construction, and maintenance criteria;

(B) standards for motorized vehicle use;

(C) traffic management; and

(D) criteria for the closing and obliteration of roads.

(4) Fire and fuel management prescriptions, including consideration of a full range of management options for fuel hazard reduction and prescribed fire and fire control strategies to minimize the risk of catastrophic wildfire and to meet other resource objectives.

(5) Wildlife management, including general prescriptions for wildlife habitat improvements.

(6) Research, including identification and prioritization of research opportunities.

(7) Monitoring, including monitoring needs for air, water, wildlife, soil, and other resources. The Secretary, in cooperation with the Secretary of the Interior, shall maintain a research and monitoring program for geothermal resources for the purpose of identifying and assessing the impact that present and proposed geothermal development in the vicinity of the Monument and Special Management Area may have on the values for which such Monument and Special Management Area were established.

(8) Conflicts, including consideration of potential conflicts among uses and resources.

SEC. 7. ADVISORY COUNCIL.

(a) ESTABLISHMENT.—There is hereby established the Newberry National Volcanic Monument Advisory Council for the purpose of advising the Secretary on the preparation of the initial management plan required by section 6(a) and on other matters at the Secretary's request.

(b) MEMBERSHIP.—The Council shall be composed of 11 members appointed by the Secretary, as follows:

(1) One member who represents the scientific community.

(2) One member who represents organized recreational interests.

(3) One member who represents organized timber industry interests.

(4) One member who represents organized geothermal industry interests.

(5) One member who represents organized tourism interests.

(6) One member of the Deschutes County Board of Commissioners.

(7) One member who represents organized environmental interests.

(8) One member who represents organized wildlife and fish interests.

(9) One at-large member from nominations submitted to the Secretary by the Governor of Oregon.

(10) The Forest Supervisor, Deschutes National Forest, and the District Manager, Prineville District, Bureau of Land Management, who shall serve as nonvoting, ex officio members.

(c) VACANCY.—A vacancy on the Council shall be filled in the same manner as the original appointment.

(d) QUORUM.—A quorum shall be 6 appointed members of the Council. The operations of the Council shall not be impaired by the fact that a member has not been appointed as long as a quorum has been attained.

(e) CHAIRPERSON AND PROCEDURES.—The Council shall elect a chairperson and establish such rules and procedures as it deems necessary or desirable.

(f) CONSULTATION.—The Secretary shall consult with the Council on a periodic and regular basis with respect to the management plan.

(g) PAY.—Members of the Council who are not full-time officers or employees of the United States shall serve without pay. Members who are full-time officers or employees of the United States shall receive no additional pay by reason of their service on the Council.

(h) SCIENTIFIC ADVISORY SUBCOMMITTEE.—The Council may appoint a Scientific Advisory Subcommittee, to be chaired by the Council member who represents the scientific community, for the purposes of advising the Council on matters related to the management plan. Subcommittee members shall be appointed for their expertise and need not be members of the Council.

(i) TERMINATION.—The Council and the Scientific Advisory Subcommittee, if any, shall cease to exist on the date upon which the management plan is officially adopted by the Secretary, or later at the discretion of the Secretary, except in no event shall the Council exist later than 5 years after the date of enactment of this Act.

SEC. 8. SAVINGS PROVISIONS.

(a) MANAGEMENT OUTSIDE BOUNDARIES OF MONUMENT.—Nothing in this Act shall be construed as authorizing or directing the establishment of protective perimeters or buffer zones around the Monument or Special Management Area for the purpose of precluding activities outside the Monument and Special Management Area boundary which would otherwise be permitted under applicable law. Nothing in this Act shall be construed as limiting the existing authority of the Secretary to take actions on Federal lands adjacent to the Monument and Special Management Area necessary to protect public health and safety in emergencies. The fact that activities

or uses outside the Monument and Special Management Area can be seen, heard, measured, or otherwise perceived within the Monument and Special Management Area shall not, of themselves, limit, restrict, or preclude such activities or uses up to the boundary of the Monument and the Special Management Area.

(b) CONTRACTS.—Nothing in this Act shall limit, restrict, or preclude the implementation of valid timber sale contracts or other contracts or agreements executed by the Secretary or the Secretary of the Interior prior to the date of enactment of this Act.

(c) ADMINISTRATION OF GEOTHERMAL STEAM ACT OF 1970.—Except as specifically provided in sections 3 and 4, nothing in this Act shall be construed to affect the authority of the Secretary of the Interior to administer the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.).

SEC. 9. DEFINITIONS.

As used in this Act:

(1) the term "allowable sale quantity" has the same meaning as such term has in section 13 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1611).

(2) The term "Council" means the Newberry National Volcanic Monument Advisory Council established by section 7.

(3) The term "Management Plan" means the plan developed under section 6.

(4) The term "Monument" means the Newberry National Volcanic Monument established by section 1.

(5) The term "Newberry Caldera Known Geothermal Resource Area" refers to the area established by the United States Geological Survey in 1974 and identified on the map referred to in section 3(a).

(6) The term "Special Management Area" means the Newberry Special Management Area established by section 1.

(7) The term "Secretary" means the Secretary of Agriculture.

(8) The term "Surface Resource Analysis of Newberry Volcano" means the document dated September 1990, prepared by the Forest Service and the Bureau of Land Management, and available for public inspection in the Office of the Chief, United States Forest Service, United States Department of Agriculture, Washington, District of Columbia.

(9) The terms "Transferal Area", "Transferal Corridor" and "Transferal Area Adjacent" mean the areas established by section 1.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

Approved November 5, 1990.

LEGISLATIVE HISTORY—H.R. 3840:

HOUSE REPORTS: No. 101-827 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 136 (1990):
Oct. 10, considered and passed House.
Oct. 22, considered and passed Senate.

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